

NOT INCLUDED
IN BOUND VOLUMES

PJMc
Laredo, TX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CON-WAY FREIGHT

Employer

and

Case 16-RC-133896

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 657

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held September 12, 2014, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 55 for and 49 against the Petitioner, with 4 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions¹ and briefs,² has adopted the hearing officer's findings³ and recommendations,⁴ and finds that a certification of representative should be issued.

¹ Although the Employer excepts to the hearing officer's finding that Antonio Cruz's testimony should not be discredited due to his alleged violation of the sequestration order, this exception is bare and unsupported by argument. Accordingly, pursuant to Sec. 102.46(b)(2) of the Board's Rules and Regulations, we find that this exception should be disregarded. See *2 Sisters Food Group*, 357 NLRB No. 168, slip op. at 3 fn. 11 (2011).

² Member Johnson notes that the Employer's citations of *Electrical Workers Local 357 (Newtron Heat Trace, Inc.)*, 343 NLRB 1486, 1498 (2004), *Bloomfield Health Care Center*, 352 NLRB 252, 256 (2008), and *NLRB v. L & J Equipment Co.*, 745 F.2d 224, 233 (3rd Cir. 1984) within Sec. IV.B. of its supporting brief either do not fully support the

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positions they are cited for or contain inaccurate quotations. Sec. 102.46(c)(3) of the Board's Rules and Regulations requires that parties "clearly" present the facts and law relied on in support of their argument; he cautions that such citations fail to meet this standard.

³ The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

⁴ In adopting the hearing officer's recommendation to overrule the Employer's Objection 10, we do not rely on the hearing officer's finding that "there is a reasonable possibility that some or all of this [vehicle] damage may have been tied, in some undefined way, to the election campaign, or at least that employees reasonably could reach that conclusion." By merely establishing that the vehicles of four pro-Employer employees sustained damage prior to the election, the Employer failed to show that the vehicle damage was linked to the election campaign, the Union, or even Union supporters. See, e.g., *ATR Wire & Cable Co.*, 267 NLRB 204, 209–210 (1983), *enfd.* 752 F.2d 201 (6th Cir. 1985); *Beaird-Poulán Division*, 247 NLRB 1365, 1379–1381 (1980), *enfd.* 649 F.2d 589 (8th Cir. 1981); see also *NLRB v. Bostik Division*, 517 F.2d 971, 974 (6th Cir. 1975), *enfg.* 209 NLRB 956 (1974). Further, we do not rely on any evidence of the employees' subjective reactions to the vehicle damage because "[i]t is well established that 'the subjective reactions of employees are irrelevant to the question of whether there was, in fact, objectionable conduct.'" *Corner Furniture Discount Center, Inc.*, 339 NLRB 1122, 1123 (2003) (quoting *Picoma Industries*, 296 NLRB 498, 499 (1989)).

Member Johnson agrees that Employer's Objection 10 should be overruled because the Employer failed to establish that the damage done to specific employees' vehicles created a *general* atmosphere of fear and reprisal. Specifically, he notes that there was no direct evidence connecting either the Petitioner or any pro-Petitioner employees to the damage, nor was there evidence of widespread dissemination of any broad-based pattern of vehicle damage (as opposed to limited dissemination of single incidents of damage) amongst the employees in the unit. He notes, however, that there may be instances where it would be reasonable to attribute vehicle damage to a certain party to an election, even in the absence of express threats of vehicle damage or specific evidence of responsibility. For example, where there was little or no prior occurrence of vehicle damage, and subsequently only the vehicles of employees who did not support the union were damaged, and a significant amount of this kind of damage occurred and became clear to employee-voters before the election, he would find objectionable conduct. However, the Employer failed to show such a scenario here.

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Brotherhood of Teamsters, Local 657, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Including: All full-time and regular part-time line haul and p&d drivers, and dock workers (including those who load, unload, those who handle over, short, & damaged goods, and those who handle weights & inspection) employed by the Employer at its facility located at 1472 Mines Road, Laredo, Texas.

Excluding: Office clerical employees, employees not on Conway's payroll, managers, guards and supervisors as defined in the Act.

Dated, Washington, D.C., July 8, 2015.

Mark Gaston Pearce, Chairman

Harry I. Johnson, III, Member

Lauren McFerran, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD